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July 15, 2015

**VIA ECF**

The Honorable James C. Francis  
 United States Magistrate Judge  
 Daniel Patrick Moynihan U.S. Courthouse  
 500 Pearl Street, Room 18D  
 New York, New York 10007

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DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 7/15/15

Re: *United States ex rel. Kester v. Novartis Pharmaceuticals Corp. et al.*,  
 Civil Action No. 11-8196 (CM) (JCF)

Dear Judge Francis:

On behalf of the Relator, David M. Kester, we write to raise a discovery dispute with Novartis that Your Honor already has resolved with respect to defendant CVS.

Specifically, despite repeated requests, Novartis has yet to tell Relator whether it is going to assert a good faith or advice of counsel defense with respect to the legality of the remuneration it gave specialty pharmacies to induce them to call patients and physicians and urge them to order Gleevec, Tasigna, TOBI, and TOBI Podhaler. In fact, despite the fact that only slightly more than three months remain before discovery will end, Novartis claims it has yet even to decide whether it will assert such a defense and does not believe it will do so until mid-August at the earliest.

As this Court is well aware, assertion of the defense will have a significant impact on discovery in this action. It will affect not only the documents Novartis will need to produce, but the depositions Relator needs to take and the experts he may need to retain. Relator raised nearly identical concerns when he moved the Court to order CVS to disclose whether it would assert such a defense—relief this Court granted, ordering CVS to decide by June 1, 2015, whether it would pursue a

July 15, 2015  
Page 2

good faith or advice of counsel defense and inform Relator of its decision. See Order, Dkt. 442 at ¶ 9. CVS did so on schedule. Relator had hoped Novartis would do the same, but it has refused to disclose its position. To avoid further delay in this action, Relator thus respectfully requests that the Court order Novartis to tell Relator by July 24, 2015, whether it still intends to assert a good faith or advice of counsel defense with respect to the non-intervened drugs. If Novartis does intend to assert this defense, and given the Court's prior order requiring Novartis to substantially complete its production by June 30, Relator further asks the Court to order Novartis to produce by July 31, 2015, any and all documents made discoverable as a result of its assertion of that defense.

We are available to discuss this issue at the Court's convenience, and we greatly appreciate the Court's attention to this matter.

Respectfully,

Andres C. Healy

7/20/15

Novartis shall state whether it intends to assert a good faith, <sup>or advice of counsel</sup> defense with respect to Okeevac, Tasigna, TD81, and TD81 Podhaler no later than July 31, 2015. If it does, it shall disclose by August 14, 2015, all documents made discoverable by assertion of that defense.

so ORDERED.

James C. Francis IV  
JCF